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CORRESPONDENCE.

VENUE OF ACTIONS AGAINST NON-RESIDENTS.

Editor Virginia Law Register:

In a recent issue of the REGISTER (4 Va. Law Reg. 361), Mr. George Ainslie discusses the status of the law in Virginia as to suits against non-residents, and whether the statutory enactment permitting a non-resident to be sued in any county or corporation "where he has estate or debts due him," is exclusive of, or cumulative with, the common law, which allowed him to be sued wherever found.

In the case of *Vinal v. Core*, 18 W. Va. 1, the question of jurisdiction of suits against non-residents was presented to our Court of Appeals, under the terms of the West Virginia Code of 1870, which are, so far as affects non-residents, practically identical with section 3214 of the Virginia Code.

The court there held the statutory enactment not to be exclusive, and that if a non-resident be within the State so as to be served with process, he remains liable to suit, as at common law, in any county in which he may be found and served with process. The statutory provision thus instead of limiting the common law right of a plaintiff, enlarges it by designating the county where the non-resident has estate or debts as an additional county in which he may be sued, whether found therein or not.

The court cites and relies upon the case of *Beirne v. Rosser*, 26 Gratt. 541, and also cites *Middleton v. Pinnell*, 2 Gratt. 202, and considers the object of the statute to be the giving a more convenient and certain court in which every resident of the State can be effectively sued; and, in such cases, to impliedly forbid the suit to be brought, as at common law it might be, in any county in which the defendant might be found, and, if not brought in the county where the defendant resides, to require it to be brought where the cause of action arose. But as the statute does not in terms repeal the common law in the case of a non-resident, it should not be construed as doing so by implication, as to do so would hinder rather than advance the object of its enactment.

The distinction drawn by the court in its interpretation of an "implied repeal" of the common law as affecting resident defendants, but which does not extend to non-residents, although both are provided for in the same statute and section, is not wholly satisfactory, and may be open to criticism as an innovation upon the rules of interpretation; but certainly has the merit of being well-nigh unanswerable from the standpoint of convenience and expediency, as the results which would follow the adoption of the contrary view are obvious.

Fortunately the legislature of West Virginia, probably recognizing the uncertainty and instability of judicial "interpretation," at the ensuing session embodied the court's views into statutory form (Acts 1882, p. 170), by re-enacting the section so as to read, "If it be against a non-resident, wherein he may be found, or may have estate or debts due him."

Vinal v. Core differs from, and goes considerably further than, *Beirne v. Rosser*, in that here there were two defendants, one a resident of Ritchie county, West Virginia, and one of the State of Michigan. The cause of action, a tort, arose

wholly in Ritchie county, and the Michigan defendant had no estate or debts due him in Wood county. Yet the court held that both defendants being found and served in Wood county, the circuit court thereof had jurisdiction; and pleas in abatement setting up these facts in a proper manner were held bad on demurrer.

In this case both of the defendants were found and served in Wood county, but it would seem plain that had the non-resident only been found and served therein, process could have been sent to any other county in the State and served upon the resident defendant, the jurisdiction of the court not being dependent upon the cause of action having arisen in Wood county.

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